

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**IN THE MATTER OF THE
ADOPTION OF: C.T.P.;
K.L.**

**v.
A.M. AND R.M., JR.**

APPELLANT,

RESPONDENTS.

DOCKET NUMBER WD77435

DATE: December 16, 2014

Appeal From:

Cole County Circuit Court
The Honorable Jon E. Beetem, Judge

Appellate Judges:

Division Three: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Attorneys:

Gregory J. Minana and Omri E. Praiss, Clayton, MO, for appellant.

Jonathan Sternberg and William H. Reynolds, Kansas City, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Before Division Three: Karen King Mitchell, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

K.L. appeals from the trial court's order and judgment which, on the basis of standing, dismissed K.L.'s petition seeking a determination of third-party custody rights and denied K.L.'s motion to intervene as a matter of right in a separate adoption proceeding. K.L. presents four points on appeal, but only one was preserved for appellate review: whether the trial court erred in concluding that section 452.375.5(5) did not give K.L. standing to seek third-party custody via either an independent cause of action or by intervention as a matter of right in a separate adoption proceeding.

DISMISSED AND REMANDED IN PART AND AFFIRMED IN PART.

Division Three holds:

(1) The trial court consolidated K.L.'s third-party custody petition and a separate adoption petition involving the child into a single action. The trial court's judgment dismissed K.L.'s third-party child custody petition and denied K.L.'s motion to intervene as a matter of right in the adoption proceeding. However, the judgment did not resolve the claims asserted in the adoption petition. Thus, the judgment is not a final judgment as it did not resolve all claims as to all parties in the consolidated action. Moreover, the judgment did not include a Rule 74.01(b) certification to permit an interlocutory appeal. Notwithstanding these facts, the denial of a motion to intervene as a matter of right under Rule 52.12(a) is a final judgment for the purposes of appeal. Thus, while the trial court's denial of K.L.'s motion to intervene is a final and appealable judgment, the trial court's dismissal of K.L.'s third-party custody petition is not a final and appealable judgment, and K.L.'s appeal of that portion of the judgment must be dismissed.

(2) Intervention as a matter of right requires the movant to demonstrate that a statute confers an unconditional right to intervene or that the movant has an interest in issue in the proceeding that will be impaired or impeded if the movant is not allowed to intervene unless the movant's interest is adequately represented by the existing parties. The movant's interest at issue

in the proceeding must amount to a direct and immediate claim to, and have its origin in, the demand made by one of the original parties to the action. An adoption proceeding is not a child custody determination wherein competing custodial rights to a child are weighed and determined by the court. Thus, the determination of custody rights is not in issue in an adoption proceeding, so K.L.'s assertion of an interest in the custody of the subject of the adoption petition is not the kind of interest that will support intervention as a matter of right in the adoption proceeding.

Opinion by Cynthia L. Martin, Judge

December 16, 2014

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